ed

study of law
h such Com-
rtificate from
showing com-

ion.

ision in each
ective depart-
ertaining the
ts as to such

FILE COPY

Office-Supreme Court, U.S.
FILED
MAR 27 1970
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. ~~686~~ 49

LAW STUDENTS CIVIL RIGHTS RESEARCH COUNCIL, INC., et al.,
Plaintiffs-Appellants,

v.

LOWELL WADMOND, et al.,
Defendants-Appellees.

STEPHEN MARTIN WEXLER, et al.,
Plaintiffs-Appellants,

v.

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, et al.,
Defendants-Appellees.

BRIEF FOR APPELLEES

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
80 Centre Street
New York, N. Y. 10013
Counsel for Appellees

DANIEL M. COHEN
Assistant Attorney General
Of Counsel

DAVID W. PECK
MICHAEL M. MANEY
SULLIVAN & CROMWELL
48 Wall Street
New York, N. Y. 10005.

Of Counsel to
Appellee Committees and
Individual Appellees

TABLE OF CONTENTS

	PAGE
Jurisdiction	1
Questions Presented	2
Statement of the Case	3
Summary of Argument	7
ARGUMENT:	
I. This Court lacks jurisdiction over the appellee courts and the judges thereof	8
II. No unconstitutional burden of proof is placed upon any applicant for the bar	9
III. The statutes are not vague or overbroad	11
Conclusion	18

CASES CITED

Aptheker v. Secretary of State, 378 U. S. 500 (1964) 14

Baggett v. Bullitt, 377 U. S. 360 (1964) 12, 13

Baird v. State Bar, No. 53 15

Beilan v. Board of Public Education, 357 U. S. 399 (1958) 14

Brandenburg v. Ohio, 395 U. S. 444 (1969) 16

Clark v. Washington, 366 F. 2d 678 (9th Cir. 1966) 9

Elfbrandt v. Russell, 384 U. S. 11 (1966) 14, 15, 16

In re Anastaplo, 366 U. S. 82 (1961) 14

Page

Keyishian v. Board of Regents, 385 U. S. 589 (1967) 14, 15,

Knight v. Board of Regents, 269 F. Supp. 339 (S.D.N.Y. 1967), aff'd 390 U. S. 36 (1968) ....

Konigsberg v. State Bar, 366 U. S. 36 (1961) .. 10, 11, 15,

Matter of Anonymous, 17 N Y 2d 674 (1966) .....

Matter of Weiss, 20 N Y 2d 696 (1967) .....

Monroe v. Pape, 365 U. S. 167 (1960) .....

Stolar, Matter of No. 75 .....

Zuckerman v. Appellate Division, Second Department (2d Cir. Jan. 29, 1970, Slip op. 1233) ....

Watkins v. United States, 354 U. S. 178 (1957) .....

Willner v. Committee on Character and Fitness, 373 U. S. 96 (1963) .....

STATUTES

28 U.S.C. § 2281 .....

42 U.S.C. § 1983 ..... 2, 8,

New York Judiciary Law,
Sec. 90 ..... 3, 9,
Sec. 229(3) .....
Sec. 466 .....

New York Civil Practice Law and Rules,
Rule 102 3,
Rule 9401 3,
Rule 9404 3,
Rule 9406 ..... 3, 4, 10, 11, 12,

Rules of New York Court of Appeals,
Rule VIII 4, 9,

COPY BOUND

PAGE

New York Constitution,
Art. XIII, Sec. 1 12

U. S. Constitution,
Art. II, Sec. 1 13
First Amendment 16

OTHER AUTHORITIES

18 Lawyers Guild Review, 60 n. 19 10

UND CLOSE IN CENTER

COPY BOUN

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 696

LAW STUDENTS CIVIL RIGHTS RESEARCH COUNCIL, INC., et al.,
Plaintiffs-Appellants,

v.

LOWELL WADMOND, et al.,
Defendants-Appellees.

STEPHEN MARTIN WEXLER, et al.,
Plaintiffs-Appellants,

v.

UPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, et al.,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEES

Jurisdiction

The judgment of the Statutory District Court, convened rsuant to 28 U.S.C. § 2281, was rendered on June 16, 9 (225a-28a). On January 12, 1970, this Court noted

CLOSE IN CENTER

probable jurisdiction over this appeal. Appellees sugges
that the appellee courts were not subject to the jurisdictio
of the District Court under 42 U.S.C. § 1983 and are no
properly subject to the jurisdiction of this Court on
appeal.

Questions Presented

1. May the New York Courts constitutionally impose,
as a condition for admission to the Bar, a requirement
that applicants possess "the character and general fitness
requisite for an attorney and counsellor-at-law", when such
a requirement has existed for many years and has been
construed repeatedly by the New York Courts?

2. May the New York Courts, and Committees on Char-
acter and Fitness appointed by them, in an attempt to
establish whether applicants for admission to the Bar can
in good faith take an oath to support the Constitution of
the United States, inquire as to their knowing affiliation
with organizations advocating the violent overthrow of the
United States government and as to whether their partici-
pation was with the specific intent to further such aims?

3. Is a statutory directive to the New York Courts con-
stitutional which directs that no person shall be admitted
to the Bar unless "he believes in the form of the govern-
ment of the United States and is loyal to such govern-
ment", when the New York Courts have construed this
directive to require only that an applicant answer in-
quiries concerning his willingness to subscribe to the oath
of support for the Constitution?

COPY BOUND

Statement of the Case

This appeal challenges, principally on the ground of alleged vagueness and overbreadth, the implementation of New York's requirements for admission to the Bar to the extent that applicants are required to complete certain questions on a written form of questionnaire promulgated by the Committees on Character and Fitness in two judicial departments of the State.

Admission to the New York Bar is entrusted to the four Appellate Divisions of the Supreme Court of the State of New York, two of which are appellees before this Court. Admission by an Appellate Division entitles the lawyer to practice before all of the courts of New York, including the Court of Appeals of the State of New York. To assist in processing applicants for admission to the Bar each Appellate Division is authorized to establish a Committee on Character and Fitness, consisting of distinguished members of the Bar, who review the qualifications of applicants who have passed the written examination conducted by the State Board of Law Examiners. The Committees for the First and Second Judicial Departments, whose Appellate Divisions are parties before this Court, are also appellees here.

The statutory framework is contained in Section 90 of the New York Judiciary Law and in Rules 9401, 9404 and 9406 of the New York Civil Practice Law and Rules.* Thus Section 90 of the Judiciary Law provides that the Appellate Division will admit to the Bar of New York a person who has passed the examination conducted by the State Board of Law Examiners, upon being "satisfied that such

---

*Civil Practice Rules, although originally enacted by the New York legislature, may be amended either by the legislature or by the New York Judicial Conference, consisting of specified judges of the New York courts, N. Y. Jud. L. § 229(3); N. Y. CPLR 102.

UND CLOSE IN CENTER

person possesses the character and general fitness requisite for an attorney and counsellor-at-law."

Rule 9401 merely authorizes an Appellate Division to appoint a Committee on Character and Fitness "for the purpose of investigating the character and fitness of every applicant for admission to practice as an attorney and counselor at law in the courts of this state." Rule 9404 provides that normally a person shall not be admitted to practice unless the Committee has certified the applicant as qualified, although the Appellate Division may by order admit persons to practice without such a certificate. The Rule further authorizes the appropriate committee, with the approval of the Appellate Division, to prescribe a form of written questionnaire which the applicant shall complete, including information as to the residence of such applicant.

Rule 9406 contains an admonition that the Committee shall not certify a person for admission as an attorney unless "he shall furnish satisfactory proof to the effect" that he is a citizen of the United States, has resided in New York for at least six months preceding his application, has complied with the applicable statutes and rules, and

> "that he believes in the form of the government of the United States and is loyal to such government."

These statutory provisions are implemented by the Rules of the New York Court of Appeals, particularly Rule VIII. This Rule interprets the statutory requirements of good moral character by providing that the applicant's duty to furnish evidence of "good moral character and general fitness requisite for an attorney and counselor-at-law" is to be accomplished by the submission of "affidavits of two reputable persons residing in the city or county in which [the applicant] resides," one of whom must be a New York attorney.* The affidavits must contain the basis for opin-

* Such requirement is also imposed as a condition for admission to the Bar of this Court. Sup. Ct. Rule 5.

COPY BOUN

ion rendered by the affiants that the applicant is a person of good moral character, and those affidavits are not conclusive on the Committee. The Rule finally authorizes the Appellate Divisions to promulgate additional rules concerning admission to the Bar.

Finally, the statutory requirements here attacked are given further content by the judicial interpretation and the actual form of the written questionnaire submitted to each applicant (which questionnaire formed the basis for the principal analysis by the court below). Although appellants made sweeping attacks on the form of questionnaire in a manner which makes it difficult to understand precisely which questions are being challenged, we believe that only two questions are reasonably involved on this appeal. Question 26 deals with the applicant's possible participation in the attempted overthrow of the United States government, and Question 27 deals with the applicant's ability and willingness to subscribe to the constitutional oath of loyalty to the United States, implementing Rule 9406 as interpreted by the New York courts. These questions now provide as follows:

"26. (a) Have you ever organized or helped to organize or become a member of any organization or group of persons which, during the period of your membership or association, you knew was advocating or teaching that the government of the United States or any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means? If your answer is in the affirmative, state the facts below.

"(b) If your answer to (a) is in the affirmative, did you, during the period of such membership or association, have the specific intent to further the aims of such organization or group of persons to overthrow or overturn

UND CLOSE IN CENTER

the government of the United States or any State or any political subdivision thereof by force, violence or any unlawful means?"

"27. (a) Is there any reason why you cannot take and subscribe to an oath or affirmation that you will support the constitutions of the United States and of the State of New York? If there is, please explain.

"(b) Can you conscientiously, and do you, affirm that you are, without any mental reservation, loyal to and ready to support the Constitution of the United States?"

The two actions which were consolidated in the District Court were commenced by the appellants, seeking declaratory and injunctive relief against the Appellate Divisions and their committees in the First and Second Judicial Departments, and predicated upon a form of questionnaire which had been revised prior to the commencement of these actions. The form of questionnaire was further revised by the Appellate Divisions pending a hearing on the appellants' motion for summary judgment and the defendants' motion to dismiss the Complaints. The District Court, in an opinion by Circuit Judge Friendly, found three of the questions then contained in the form of questionnaire susceptible to constitutional infirmity: 27(a) on the ground of vagueness; and the others because they were excessively broad (A-164 to A-167). One of these questions was deleted by the Appellate Divisions and the other two, set forth above, were substantially revised by the Appellate Divisions, and Question 27(a) was further revised by the District Court, prior to the entry of final judgment. The appellants, however, press their attack in large part upon the various forms of questionnaire which had been discontinued by the Appellate Divisions prior to these actions, or immediately after their com-

COPY BOUN

mencement. Appellants also continue to assail their conception of the system of personal interviews conducted of applicants by members of the Committee on Character and Fitness, alleging without any evidentiary support in the record that such interviews are indiscriminate invasions of their personal and political lives. As Judge Friendly noted below (167a-68a) no evidence of this was submitted to the District Court and no reason exists for not assuming that the scope of the personal interviews will be limited by the permissible scope of the written questionnaire.

Summary of Argument

The judgment of the District Court should be affirmed, but limited to a mandate involving the appellee Committees on Character and Fitness. The New York courts now parties before this Court are not "persons" within the meaning of the Civil Rights Act, and are not subject to suit in either of the two cases now involved on this appeal.

On the merits, it is manifest that the New York statutory framework governing admission to the Bar places no burden of proof upon an applicant, but merely requires that an applicant initially come forward with some specific evidence as to his character and fitness to be a member of the New York Bar. This burden is specified in Rules of the New York Court of Appeals as requiring only that an applicant submit affidavits from two reputable persons, attesting to the applicant's character and fitness.

Similarly, an applicant's obligation to furnish proof of his support for the United States has been interpreted by the New York courts as requiring only support for the Constitution of the United States, and that "burden" is met simply by answering the two questions directed to that subject in the form of questionnaire submitted to each applicant.

OUND CLOSE IN CENTER

The interpretations placed on the standards for admission to the New York Bar by the courts of that State remove any reasonable question of vagueness or overbreadth. An applicant must have the "character and general fitness" relevant to the legal profession, and must be willing to support the Constitution of the United States. The statutory requirement that an applicant believe in and be loyal to the form of government of the United States has been clearly interpreted as requiring no more than willingness on the part of an applicant to subscribe to the constitutional oath.

There is also no overbreadth intruding upon protected rights of association or expression in the questions promulgated of applicants. The only question susceptible of such inquiry has been carefully drafted to track the language of the opinions of this Court as to the inquiry which a state may properly make of applicants. The questions do not, of course, reach a degree of precision which this Court has found necessary to sustain a criminal conviction, but no such prosecution has ever been threatened by New York.

The procedures governing admission to the New York Bar are precise and limited to protect legitimate rights of expression and association. Such was recognized by the statutory District Court and the judgment of that Court should be affirmed.

ARGUMENT

I.

This Court lacks jurisdiction over the appellee courts and the judges thereof.

The appellees argued before the District Court that these actions, predicated on the substantive rights conferred by the Civil Rights Act, 42 U.S.C. § 1983, were not within the jurisdiction of the federal court because the

COPY BOUN

defendants are not amenable to suit, being courts of the State of New York and arms of those courts. That argument was rejected by the District Court (148a-50a), and the jurisdictional argument was not pressed in the Motion to Affirm filed with this Court. Nevertheless we submit that, at least as to the state courts and the judges thereof, no mandate of this Court should issue because those parties are not "persons" within the meaning of 42 U.S.C. §1983. See *Monroe* v. *Pape*, 365 U. S. 167, 187-92 (1960); *Zuckerman* v. *Appellate Division, Second Department* (2d Cir. Jan. 29, 1970, slip op. 1233).

While we think there is grave doubt that the Committees on Character and Fitness, being instrumentalities of the Appellate Divisions, are "persons" within the meaning of the Civil Rights Act, (see *Clark* v. *Washington*, 366 F. 2d 678, 681 [9th Cir. 1966]), this Court has entertained actions against that body without objection. *Willner* v. *Committee on Character and Fitness*, 373 U. S. 96 (1963).

Apart from the immunity of judges from damage actions involving acts performed under color of their judicial office, appellees submit that it is unseemly and inconsistent with the doctrine of federalism for the courts of New York to be called before a federal court as defendants.

II.

No unconstitutional burden of proof is placed upon any applicant for the bar.

One of the main attacks leveled by appellants is directed to the burden of proof allegedly placed upon each applicant, the argument being that an applicant has an undefined burden of establishing his own good moral character and fitness. This finds no support in the statutes or rules. Section 90 of the Judiciary Law requires only that the Appellate Division *be satisfied* that an applicant is qualified, and Rule VIII of the Court of Appeals Rules governing

UND CLOSE IN CENTER

Admission of Attorneys merely requires the production of two affidavits to meet the initial burden of demonstrating character and fitness. As this Court has held in *Konigsberg* v. *State Bar*, 366 U. S. 36, 53-56 (1961), the State may legitimately place upon an applicant for admission to the Bar the initial burden of coming forward with *some* evidence of his fitness to be an officer of the Court. In fact, the Court of Appeals Rule is explicit in describing precisely how that burden is to be met, and no one can seriously contend that any substantial burden is thereby imposed.

Moreover, no decision is cited by the appellants, in the score of cases advanced by them, where any applicant has been denied admission to the Bar on the basis that evidence of good moral character was missing.* In each instance the propriety of the Court's refusal to admit the applicant was reviewed solely on the basis of the adequacy of the evidence of bad moral character found by the Committee.

The only other element upon which an issue of the burden of proof may be raised is with respect to Rule 9406, requiring the applicant to "furnish satisfactory proof" of various matters. No issue is raised with respect to the requirement that a person must have been an actual resident of New York for at least six months before being admitted to the Bar, or that proof of such residence may initially placed upon the applicant.**

---

* Indeed, the fact remains, as conceded in 18 *Lawyers Guild Review*, at 60 n. 19, "denials, on character grounds, in case of student applicants, are extremely infrequent."

** Applicants continue to object to a form of affidavit which they entitle "Home Life", the present form of which is in the record (121a-22a; 139a-40a). These forms of affidavit serve two purposes: to substantiate the opinion of the affiant as to the applicant's moral character, by showing the basis upon which the affiant has rendered his opinion, and to substantiate to the extent possible the applicant's New York residence. The questions directed at visits to the applicant's home are obviously designed to determine merely whether the affiant is a personal or business acquaintance of the applicant, and whether any home visits are to the New York address given by the applicant in the questionnaire.

COPY BOU

Rule 9406 is not self-executing and does not apply directly to individual applicants for admission to the Bar, or law students who anticipate such status. Rather it constitutes a direction to the Appellate Divisions and their committees of certain conditions which must be met before admission is granted. Rule 9406 is therefore not a statute susceptible to a vagueness analysis standing by itself, but must be viewed in its reasonable context together with the implementing interpretations placed upon it by the courts. The proof to be furnished by applicants is identified in the form of a questionnaire and affidavits to be submitted in support of the application, which clearly establish that the only burden of proof is merely one of coming forward with historical data and character references. The interpretation of the particular conditions, as, for example, the meaning of the mandate in Rule 9406(1) of belief in and loyalty to the United States, is given its content and interpretation by the implementing questionnaire.

Nowhere in the record is there any evidence to support the appellants' repeated assertions that the burden of proof, as distinguished from the burden of coming forward, rests upon a Bar applicant at any stage. That was the conclusion of the District Court (152a) and there is no reason for this Court to assume that New York intends such a burden in the absence of "unequivocal indication" that such a burden has been imposed. *Konigsberg* v. *State Bar,* 366 U. S. 36, 55 (*supra*).

III.

The statutes are not vague or overbroad.

The statutes and rules contain only two references which could reasonably be subject to any attack on vagueness grounds: the definition of "moral character and fitness" and the requirement that an applicant "believe in the

OUND CLOSE IN CENTER

form of the government of the United States and is loyal to such government" (Rule 9406[1]). As those terms have been interpreted by the courts of New York they are clearly not susceptible to any reasonable attack.

This Court has noted that even an attack on the face of a statute on vagueness grounds must be considered with the interpretive gloss put on such a statute by the state courts. See *Baggett* v. *Bullitt*, 377 U. S. 360, 369 (1964). Both of the statutory elements considered above have been interpreted by the New York courts, in decisions of those courts and in the interpretation placed on the statutory delegation to the Appellate Divisions as implemented in the form of questionnaire.*

The New York Constitution provides for an oath of support to it and the Federal Constitution (N. Y. Const., Art. XIII, § 1), and that oath is implemented by statute to be taken by each officer of the Court, including every member of the New York Bar (Judiciary Law § 466). Rule 9406, in requiring belief in and loyalty to the United States Government, has been interpreted by the Appellate Divisions as requiring nothing more than a statement of willingness to subscribe to the constitutional oath. That interpretation is reflected in Question 27 in the form of questionnaire, which reads as follows:

> "27. (a) Is there any reason why you cannot take and subscribe to an oath or affirmation that you will support the constitutions of the United States and of the State of New York? If there is, please explain.

---

* This case presents the curious situation in which the bodies entrusted with definitive interpretation of the statutes being attacked are the very appellees before this Court. Thus we submit that if the statutes are sustainable upon the reasonable interpretation placed on them in this brief, appellants' attack must fail.

"(b) Can you conscientiously, and do you, affirm that you are, without any mental reservation, loyal to and ready to support the Constitution of the United States?"

Question 27(a) was drafted by the District Court, and is not reasonably susceptible to attack. New York is certainly entitled to require of officers of its courts an oath of loyalty and support for the constitutions of the United States and of New York. That oath has already been upheld by this Court. *Knight* v. *Board of Regents,* 269 F. Supp. 339 (S.D.N.Y. 1967), *aff'd,* 390 U. S. 36 (1968).

Question 27(b) is phrased in the language of that constitutional oath, with the addition of the phrase "without any mental reservation," which the Court below noted is a phrase contained in the oaths taken by federal judges (162a), and the declaration of loyalty in addition to support for the Constitution. Such a question is certainly no different from the oath sustained in *Knight,* and no less definite than the oath prescribed in Article II, § 1 of the Constitution which requires of the President an oath to "preserve, protect and defend" the Constitution.

The questions are not only precise, but provide a clear and proper interpretation of the mandate of Rule 9406(1), interpreting the requirement of belief in and loyalty to the form of government of the United States as limited only to loyalty and support for the Constitution of our nation.*

Question 26 also deals with the ability of an applicant to take the constitutional oath upon admission, but the specific thrust of that question is slightly different from question 27. Question 26 is in two parts, the first of which requires identification of an applicant's *knowing* membership in organizations advocating the violent over-

---

*This interpretation distinguishes one of the defects in *Baggett* v. *Bullitt,* which dealt only with loyalty to the *Government,* not Constitution of the United States.

throw of the United States. As phrased, question 26(a) obviously would not serve as the basis for denial of admission if an affirmative answer were given, but does serve to identify membership in organizations to which question 26(b) would then apply. Question 26(b) restricts the scope of inquiry to those organizations in which the applicant was a knowing member with the "specific intent" to further the advocacy of violent overthrow. As such the scope of inquiry is directed to only such membership as has been held by this Court to be a proper foundation for denying public employment. *Keyishian* v. *Board of Regents*, 385 U. S. 589 (1967); *Elfbrandt* v. *Russell*, 384 U. S. 11 (1966); *Aptheker* v. *Secretary of State*, 378 U. S. 500 (1964).

This Court has consistently held that a state has a legitimate interest in inquiring of prospective lawyers and teachers as to their affiliation with organizations that advocate violent overthrow of the government. See, *e.g.*, *In re Anastaplo*, 366 U. S. 82 (1961); *Konigsberg* v. *State Bar*, 366 U. S. 36 (*supra*); *Beilan* v. *Board of Public Education*, 357 U. S. 399 (1958). Surely a state interest in preserving the integrity of the teaching profession is equaled by its interest in ensuring that officers of the Court, who in a real sense are representatives to the public of the rule of law, are not committed to the advocacy of violent overthrow of the state and federal governments.

As was recognized by this Court in *Konigsberg*, a state may inquire as to an applicant's membership in such organizations, and question 26(a) merely asks for the identification of any such membership. There is no suggestion that an affirmative answer to question 26(a), absent an affirmative answer to question 26(b), would result in denial

COPY BOUN

of admission, although a refusal to answer either part could result in the denial of admission.*

Question 26 is phrased with the precision demanded by the opinions of this Court. There is no inquiry conducted by New York which would require the identification of all personal and political affiliations, such as is presented in *Stolar*, No. 75, or in *Baird* v. *State Bar*, No. 53. In each of those two cases the applicants have answered one of two questions: either they have identified all of their affiliations and refused to answer a question concerning membership in the Communist Party or other similar organizations *(Baird)*, or they have answered the question concerning membership in the Communist Party and refused to furnish an answer to a question directed to membership in all organizations (*Stolar*). New York has taken the position that broad inquiry into all membership is not relevant to admission (although disciplinary action taken against the applicant by an organization would be), but has taken the position consistent with the repeated decisions of this Court that a precisely worded inquiry into the applicant's possible association with organizations advocating violent overthrow is permissible.**

We recognize that there is a distinction between conduct which can serve as the basis of inquiry, where the refusal to permit such inquiry would serve as the ground for denial of admission, and conduct which could serve as the basis for criminal prosecution. *Keyishian* and *Elfbrandt* make clear that a state may inquire of individuals whether they have been members of organizations which advocate violent overthrow, if the individuals shared the specific intent to further such advocacy. Yet

---

* No issue is presented in this case with respect to the effect which may be given by the Committee to invocation of the Fifth Amendment by an applicant.

** It is not even clear that an applicant who refused to answer question 26(a) but did answer 26(b) in the negative would be denied admission, although the decision in *Konigsberg* would justify such denial.

OUND CLOSE IN CENTER

Brandenburg v. *Ohio*, 395 U. S. 444 (1969), makes clear that criminal prosecution for the conduct of advocacy of violent overthrow can only occur if the advocacy presented a clear and present danger of imminent lawless action. No applicant for the Bar of New York has been prosecuted criminally for answering the questionnaire, nor could he. But New York is certainly entitled, under *Keyishian and Elfbrandt*, to ask applicants whether they have subscribed to the specific intent to advocate violent overthrow.*

As interpreted by the form of the questionnaire, the statutes and rules have precise content and are in no way vague. The only issue really presented on this appeal is whether question 26 is overbroad in requiring the disclosure of associations protected by the First Amendment. The specific phrasing of the two subdivisions of that question makes it clear that the state has here attempted to be as precise as possible, and not to sweep within the scope of its inquiry conduct which is protected from scrutiny. Certainly New York has employed "precision of regulation" so as to reduce, to a *de minimis* point, any "chilling" effect on the exercise of protected rights by even the most hypersensitive of law students. See, *e.g.*, *Matter of Weiss*, 20 N Y 2d 696 (1967); *Matter of Anonymous*, 17 N Y 2d 674 (1966).

The only remaining issue subject to attack on the ground of vagueness is the general requirement that admission to the Bar of New York must be predicated upon a finding of good moral character and fitness—not in general, but specifically the moral character and fitness required of an attorney (Judiciary Law § 90; C.P.L.R. Rule 9401;

---

* Appellants suggest that question 26(a) is more vague than one which refers to specific organizations listed as subversive by the Attorney General, since an applicant would at least know which organizations are covered. But the phrasing of the question only requires the identity of organizations which the applicant *knew* were advocating violent overthrow, not all organizations which in fact so advocated.

COPY BOUN

New York Court of Appeals Rule VIII). If this Court were reviewing the question on a blank slate there might be some merit to the claim that "good moral character and fitness", even limited to the moral character and fitness required of an attorney, is unduly vague. But that phrase is not new or unique, and has been employed by the Bar of every state, to our knowledge, throughout the history of the Union. The District Court was unanimous in holding such a phrase constitutional (151a-52a; 190a-93a [dissenting opinion of Motley, D.J.]). As noted by the District Court, New York has given content to this phrase over the years in the decisions of its Courts, so that the phrase "character and general fitness" or "good moral character and fitness" have been limited to the absence of acts of moral turpitude, conduct evidencing lack of veracity or non-observance of fiduciary responsibility, or, as stated by Judge Motley, "dishonorable conduct relevant to the legal profession." (192a, n. 20)

This Court in *Konigsberg*, 366 U. S. at 40-44, noted that California's requirement "of good moral character could not well be drawn in question." New York's requirement is even more precise in limiting the character to traits relevant to the legal profession, which no one yet has suggested is an impermissible condition for admission into a profession which can survive only through the performance of duty with honor, candor, and the highest degree of fiduciary responsibility.*

---

*The appellants raise other arguments, not advanced before the District Court, which deserve little comment. They intimate that requiring disclosure of arrests in question 23(b) unduly invades their privacy, apparently predicated on the argument that the committees will not understand the basis for some arrests due to the "generation gap", and because adverse publicity, as noted in *Watkins* v. *United States*, 354 U. S. 178 (1957), unduly impinges on their privacy. There is no evidence in the record whatsoever, and we doubt that it is a matter of judicial notice, that the committees are not fully understanding of contemporary political activity which may result in unjustified arrests. Moreover, the fact that these questionnaires are maintained in confidence removes any *Watkins* problem that an applicant might be injured by publicity concerning his prior arrests or associations.

OUND CLOSE IN CENTER

Conclusion

New York's procedures governing admission to the Bar, as interpreted by the New York courts, are not unconstitutionally vague and do not intrude upon the exercise of any rights guaranteed to potential lawyers under the United States Constitution.

The judgment appealed from should be affirmed.

Louis J. Lefkowitz
Attorney General of the
State of New York
80 Centre Street
New York, New York 10013
Counsel for Appellees

Daniel M. Cohen
Assistant Attorney General
Of Counsel

David W. Peck
Michael M. Maney
Sullivan & Cromwell
48 Wall Street
New York, N. Y. 10005.

Of Counsel to
Appellee Committees and
Individual Appellees

NO
be re
the o
of th
the c
Co., 2

SUPRI

LAW
CO

APPEAL I

No. 49.

Appellant
overbre
admissi
require
Court
general
commit
persons
with th
cant.
applica
applica
States
cedure,
denied
that it
and as
found
intrusi
validity
and w
proced
1. T
sion to
Pp. 4–
(a
compa
profess